SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

THOMAS C. EDWARDS, Plaintiff, vs. THE UNITED STATES, Defendant.		No. 790.

CERTIFICATE FROM THE COURT OF CLAIMS.

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BRIEF FOR PLAINTIFF.

This case came on for hearing in the Court of Claims upon demurrer filed by the defendant to the petition. The only question raised on the demurrer was a constitutional question, and that is, whether the special congressional act involved in this case having been signed by the President on March 5, 1931, subsequent to the adjournment of Congress but within ten days, Sundays excepted, after it was presented to him, became a law.

In its brief on the demurrer in the Court of Claims the defendant cited an opinion by Attorney General Mitchell, dated March 4, 1931, to President Hoover (36 Op. A. G. 403), wherein the Attorney General rendered a decision on the identical point at issue in this case to the President just one day prior to the date that he signed and approved the special Act, the constitutionality of which is now in question, and in conformity with which decision the President signed and approved the special Act now in issue on March 5, 1931, just one day subsequent to the final adjournment of the Congress which passed it, and in its brief on

this case the defendant, referring to the opinion of the Attorney General, *supra,* stated:

> "Counsel for the Government are personally of the opinion that the conclusion reached by the Attorney General is correct, * * *."

The same point was raised on demurrer at the same time by the defendant in the Court of Claims in the case of *The Orange Car & Steel Co.* v. *The United States,* Court of Claims No. M–341. In this case a special Act was passed for relief of The Orange Car & Steel Co. by Congress and was signed and approved by the President on March 5, subsequent to the adjournment of the Congress which passed it, precisely as in the instant case and in this case likewise the defendant cited the opinion of the Attorney General, *supra,* and made the same statement with reference thereto. Under date of February 8, 1932, the Court of Claims rendered an opinion in The Orange Car & Steel Co. case, *supra,* and on page 4 of its opinion, referring to the opinion of the Attorney General, *supra,* stated:

> "The able and exhaustive opinion of the Attorney General, which is set out in the argument, leaves nothing further to be said on this question. Following this opinion, we hold that the act is constitutional."

Thereafter and notwithstanding this decision by the Court of Claims on the identical point at issue the Court of Claims certified to the Supreme Court of the United States on March 11, 1932, the identical question which it had previously decided in The Orange Car & Steel Co. case, *supra,* as aforesaid. Likewise, the Court of Claims has previously decided the same point at issue in the case of *United States* v. *Weil,* 29 Ct. Cls. 523, and in that case in a very exhaustive opinion decided that not only a bill signed by the President of the United States after an adjournment of Congress for a recess became a law, but went further and discussed and decided the point now at issue, namely, a

bill signed by the President after the final adjournment of Congress but within ten days, Sundays excepted, was a valid law. It is true that the discussion of this point was not necessary to the disposition of that case, but nevertheless the point involved was specifically decided by the Court of Claims. On page 527 of that case the Court of Claims stated:

> "After a prolonged and careful examination of the history of the Abandoned and Captured Property Act, 12th March, 1863 (12 Stat. L. P. 820), the Court is now constrained to say that * * * the authority of the President to approve a bill within the time prescribed by the Constitution, *but after the expiration of the Congress* which passed it must be regarded as now settled."

In the Court of Claims' discussion of the point at issue in the Weil case, *supra,* the history of the Abandoned and Captured Property Act which was approved by President Lincoln on March 12, 1863, eight days subsequent to the final adjournment of Congress, was thoroughly discussed and the various cases involving the constitutionality of this act which came before the United States Supreme Court were cited, and the Court of Claims held that since the constitutionality of this act had been before the United States Supreme Court in the cases in question, argued by the most learned counsel, and decided by the United States Supreme Court upholding the constitutionality of said act, that it must be held as settled that the Supreme Court, in upholding the said act in all of the said cases cited, particularly those where the constitutionality of the act was at issue as cited by the Court of Claims, had determined that an act signed and approved by the President within the ten-day period subsequent to the final adjournment of Congress, was a valid law.

The Court of Claims, in the Weil case, *supra,* page 534, further stated with reference to the decision of the Supreme

Court sustaining the validity of the said Abandoned and Captured Property Act:

> "Nothing can be plainer than that the Judges had before them two essential facts—that the bill was passed by the 37th Congress; that it was approved after the 37th Congress had expired; and nothing can be plainer than that with those facts before them they were then to determine whether the Court had jurisdiction of cases resting wholly upon the constitutionality of the act."

On page 538 of the Weil case, *supra,* the Court of Claims discusses the Constitution itself and such arguments as had been theretofore advanced against the constitutionality of an act approved by the President subsequent to the final adjournment of Congress and held that such adverse arguments were without valid grounds. And on page 540 of the said decision the Court of Claims stated:

> "The conclusion drawn from the text of the Constitution that the approval or disapproval of a bill by the President is not an exercise of the legislative power is rendered certain by referring to the history of the provisions."

Finally, on page 547, the Court of Claims stated, in the Weil case, *supra:*

> "But there is no provision which guards against the contingency of the President approving a bill after the adjournment of Congress. *None was intended and none was needed.*" (*Padelford* v. *United States,* 9 Wall. 543; *Klein* v. *United States,* 13 Wall. 128; *Pargoud* v. *United States,* 13 Wall. 156; *Sprott* v. *United States,* 20 Wall. 468; *Byrnes* v. *United States,* 3 Ct. Cls. 195; *Gaithers* v. *United States,* 3 Ct. Cls. 191.)

Since the defendant concedes that the opinion of the Attorney General (36 Op. A. G. 403) in conformity with which the present act was signed and approved by the President on March 5 is correct and the Court of Claims

has concurred in this opinion of the Attorney General in the case of The Orange Car & Steel Co., *supra*, and in the Weil case, *supra*, in a most exhaustive discussion of the identical point at issue after citing the numerous decisions of this court upholding the constitutionality of the Abandoned and Captured Property Act which was not approved by President Lincoln until March 12, 1863, eight days subsequent to the final adjournment of Congress, "that the authority of the President to approve a bill within the time prescribed by the Constitution, but after the expiration of the Congress which passed it must be regarded as now settled," it is submitted that the question submitted to this court should be answered in the affirmative.

Respectfully submitted,

M. WALTON HENDRY,
Attorney for Plaintiff.